IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2973 OF 2007

Sushma Pandurang Paikekari ..Applicant.

Vs.

THE STATE OF MAHARASHTRA ..Respondent.

Mr Rajiv Patil with Mr V.V. Purwant,
Advocates, for the Applicant.

Ms S. D. Shinde, A.P.P. for the State.

CORAM: V. C. DAGA,J.

DATED: 2ND NOVEMBER, 2007.

P.C.
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1. Heard learned counsel for the applicant and A.P.P. for the respondent.

2. Perused application and the material available on record.

3. The applicant has invoked jurisdiction of this Court under Section 438 of Cr.P.C. for releasing him on anticipatory bail in C.R. No.72 of 2007 registered with Mangalwedha Police Station for the offence under Sections 409, 420, 468, 471 read with Section 34 of I.P.C.

4. According to the prosecution, the applicant was working as a Naib Tahsildar since 6.9.2005 to 23.5.2007 at Mangalwedha. During the period 1.2.2006 to 22.2.2006 she was deputed as Temporary Tahsildar on retirement of co-accused Mr Kolekar (the then Tahsildar). Additional duty as a Secretary of National Old Age Pension Scheme was assigned to the present applicant by the Government under Social Finance Assistant Scheme implemented by Social Justice, Cultural Activities, Sports and Special Assistant Department.

5. According to the prosecution, during the period of 16.1.2006, 24.1.2006, 3.4.2006 and 6.5.2006 the applicant has prepared notings, seeking permission to sanction cheques in the name of Secretary or Tahsildar, Sanjay Gandhi Scheme, Solapur. The said notings were forwarded to Tahsildar for approval who used to sanction the said cheques mentioned in the notings. Relying on said notings Tahsildar appears to have issued cheques to one Chitnis who appears to have withdrawn amount from the bank under the signature of the Tahsildar. It is alleged that there is defalcation and misappropriation of Rs. 23,55,482/- in the office of Tahsildar in connivance with each

other.

6. At this juncture, it will not be out of place to mention that in commission of the crime, almost all Tahsildars and Naib Tahsildars and the Clerks working under them are involved. The thorough investigation is in progress. Now, matter appears to have been handed over to the C.I.D. The misappropriation of the amount is in large scale, meant for social schemes, needs to be investigated. Under these circumstances, custodial interrogation would definitely help the Investigating Agency to bring the real culprit to the books.

7. The Apex Court in the case of **Bharat Chaudhary and Anr Vs. State of Bihar and Anr. (2003) 8 S.C.C. 77** observed that the object of Section 438 of the Code is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail.

8. In the case of **Adri Dharan Das V. State of W.B. (2005) 4 S.C.C. 303 the Apex Court** said that the power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438 of the Code. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e.the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation in non-bailable offences.

9. The Apex Court in the case of **Gurbaksh Singh v. State of Punjab, A.I.R. 1980 S.C. 1632** observed, as follows:-

> "We would, therefore, prefer to leave the High Court and the Court of Sessions to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these Courts to act objectively and in consonance with principles

governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the Legislature has conferred upon them, by laying down inflexible rules of general application."

10. The Apex Court in the case of **State represented by the C.B.I. Vs. Anil Sharma, (1997) 7 Supreme Court cases 187** while emphasizing importance of custodial investigation observed as follows:

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disintering many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disintering offences would not conduct themselves as offenders."

(Emphasis supplied)

11. In the case of **K.K. Jerath v. Union Territory, Chandigarh, 1998 Cri.L.J. 2555** and

placed reliance on following observations:-

> "5. We do not wish to enter into any detailed discussion on these legal aspects raised by the learned counsel for the respondents as this Court in the several decisions referred to by the learned counsel for the petitioner has explained the scope of the provisions of Articles 20 (2) and 21 of the Constitution and Section 486 of the Code of Criminal Procedure and their inter-relationship. We may only State in considering a petition for grant of bail necessarily if public interest requires detention of citizen in custody for purpose of investigation could be considered and rejected as otherwise there could be hurdles in the investigation even resulting in tampering of evidence."
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> (Emphasis supplied)

12. A three Judges Bench of the Apex Court in the case of **Pokar Ram v. State of Rajasthan**, **A.I.R. 1985 S.C. 969** (Para 5) observed as under:-

> "Relevant considerations governing the Court's decision in granting anticipatory bail under S. 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher Court and bail is sought during the pendency of the appeal."

13. Similar observation have been made by the Apex Court in the case of **Anil Sharma**

(supra) "The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."

14. In the backdrop of the aforesaid law laid down by the Apex Court in the matter available on record, this is not a fit case for grant of anticipatory bail.

15. Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

16. In the result, application is rejected.

(V.C.DAGA,J)